

The House Committee on Governmental Affairs offers the following substitute to HB 1230:

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to change certain provisions in the "Georgia Development Impact Fee Act"; to change and provide for definitions; to increase community participation in development impact fee advisory committees; to provide for the expenditure of impact fees; to correct cross-references; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by striking Chapter 71, relating to the "Georgia Development Impact Fee Act," and inserting in lieu thereof the following:

"36-71-1.

(a) This chapter shall be known and may be cited as the 'Georgia Development Impact Fee Act.'

(b) The General Assembly finds that an equitable program for planning and financing public facilities and public transportation needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety, and general welfare of the citizens of the State of Georgia.

It is the intent of this chapter to:

(1) Ensure that adequate public facilities and public transportation are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities and public transportation needed to serve new growth and development;

(3) Establish minimum standards for the adoption of development impact fee ordinances by municipalities and counties; and

(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities and public transportation needed to serve new growth and development and to prevent duplicate and ad hoc development exactions.

36-71-2.

As used in this chapter, the term:

(1) 'Capital improvement' means an improvement with a useful life of ten years or more, by new construction or other action, which increases the service capacity of a public facility or public transportation.

(2) 'Capital improvements element' means a component of a comprehensive plan adopted pursuant to Chapter 70 of this title which sets out projected needs for system improvements during a planning horizon established in the comprehensive plan, a schedule of capital improvements that will meet the anticipated need for system improvements, and a description of anticipated funding sources for each required improvement.

(3) 'Comprehensive plan' has the same meaning as provided for in Chapter 70 of this title.

(4) 'Developer' means any person or legal entity undertaking development.

(5) 'Development' means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities or public transportation.

(6) 'Development approval' means any written authorization from a municipality or county which authorizes the commencement of construction.

(7) 'Development exaction' means a requirement attached to a development approval or other municipal or county action approving or authorizing a particular development project, including but not limited to a rezoning, which requirement compels the payment, dedication, or contribution of goods, services, land, or money as a condition of approval.

(8) 'Development impact fee' means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development.

(9) 'Encumber' means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a municipality or county.

(10) 'Fee-payer' means that person who pays a development impact fee or his successor in interest where the right or entitlement to any refund of previously paid development impact fees which is required by this chapter has been expressly transferred or assigned to the successor in interest. In the absence of an express transfer or assignment of the right or entitlement to any refund of previously paid development impact fees, the right or entitlement shall be deemed 'not to run with the land.'

~~(10.1)~~(11) 'Governmental entity' means any water authority, water and sewer authority, or water or waste-water authority created by or pursuant to an Act of the General Assembly of Georgia.

~~(11)~~(12) 'Level of service' means a measure of the relationship between service capacity and service demand for public facilities or public transportation in terms of demand to capacity ratios, ~~or~~ the comfort and convenience of use or service of public facilities or public transportation, or both.

~~(12)~~(13) 'Present value' means the current value of past, present, or future payments, contributions or dedications of goods, services, materials, construction, or money.

~~(13)~~(14) 'Project' means a particular development on an identified parcel of land.

~~(14)~~(15) 'Project improvements' means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project and are not system improvements. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement and the physical location of the improvement on site or off site shall not be considered determinative of whether an improvement is a project improvement or a system improvement. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. No improvement or facility included in a plan for public facilities or public transportation approved by the governing body of the municipality or county shall be considered a project improvement.

~~(15)~~(16) 'Proportionate share' means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area.

~~(16)~~(17) 'Public facilities' means:

(A) Water supply production, treatment, and distribution facilities;

(B) Waste-water collection, treatment, and disposal facilities;

(C) ~~Roads, streets, and bridges, including rights of way, traffic signals, landscaping, and any local components of state or federal highways;~~

~~(D)~~ Storm-water collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

~~(E)~~(D) Parks, open space, and recreation areas and related facilities;

~~(F)~~(E) Public safety facilities, including police, fire, emergency medical, and rescue facilities; and

~~(G)~~(F) Libraries and related facilities.

(18) 'Public transportation' means roads, streets, and bridges, including rights of way, traffic signals, landscaping, any local components of state or federal highways, streetcars, light rail projects, or other transportation rail projects, including preconstruction activities, when such projects are not part of a system that is presently owned by a regional transportation authority.

~~(17)~~(19) 'Service area' means a geographic area defined by a municipality, county, or intergovernmental agreement in which a defined set of public facilities or public transportation provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles or both.

~~(18)~~(20) 'System improvement costs' means costs incurred to provide additional public facilities or public transportation capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions, including but not limited to the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchases, court awards and costs, attorneys' fees, and expert witness fees), and expenses incurred for qualified staff or any qualified engineer, planner, architect, landscape architect, or financial consultant for preparing or updating the capital improvement element, and administrative costs, provided that such administrative costs shall not exceed 3 percent of the total amount of the costs. Projected interest charges and other finance costs may be included if the impact fees are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the municipality or county to finance the capital improvements element but such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

~~(19)~~(21) 'System improvements' means capital improvements that are public facilities or public transportation and are designed to provide service to the community at large, in contrast to 'project improvements.'

1 (22) 'Transportation impact fee' means those development impact fees specifically paid
2 for public transportation improvement.

3 36-71-3.

4 (a) Municipalities and counties which have adopted a comprehensive plan containing a
5 capital improvements element are authorized to impose by ordinance development impact
6 fees as a condition of development approval on all development pursuant to and in
7 accordance with the provisions of this chapter. After the transition period provided in this
8 chapter, development exactions for other than project improvements shall be imposed by
9 municipalities and counties only by way of development impact fees imposed pursuant to
10 and in accordance with the provisions of this chapter.

11 (b) Notwithstanding any other provision of this chapter, that portion of a project for which
12 a valid building permit has been issued prior to the effective date of a municipal or county
13 development impact fee ordinance shall not be subject to development impact fees so long
14 as the building permit remains valid and construction is commenced and is pursued
15 according to the terms of the permit.

16 (c) Payment of a development impact fee shall be deemed to be in compliance with any
17 municipal or county requirement for the provision of adequate public facilities ~~or services~~
18 or public transportation in regard to the system improvements for which the development
19 impact fee was paid.

20 36-71-4.

21 (a) A development impact fee shall not exceed a proportionate share of the cost of system
22 improvements, as defined in this chapter.

23 (b) Development impact fees shall be calculated and imposed on the basis of service areas.

24 (c) Development impact fees shall be calculated on the basis of levels of service for public
25 facilities or public transportation that are adopted in the municipal or county
26 comprehensive plan that are applicable to existing development as well as the new growth
27 and development.

28 (d) A municipal or county development impact fee ordinance shall provide that
29 development impact fees shall be collected not earlier in the development process than the
30 issuance of a building permit authorizing construction of a building or structure; provided,
31 however, that development impact fees for public transportation or public facilities
32 described in subparagraph ~~(D)~~ (C) of paragraph ~~(16)~~ (17) of Code Section 36-71-2 may be
33 collected at the time of a development approval that authorizes site construction or

1 improvement which requires public transportation or public facilities described in
2 subparagraph ~~(D)~~ (C) of paragraph ~~(18)~~ (17) of Code Section 36-71-2.

3 (e) A municipal or county development impact fee ordinance shall include a schedule of
4 impact fees specifying the development impact fee for various land uses per unit of
5 development on ~~a service~~ an area by ~~service~~ area basis. The ordinance shall provide that
6 a developer shall have the right to elect to pay a project's proportionate share of system
7 improvement costs by payment of development impact fees according to the fee schedule
8 as full and complete payment of the development project's proportionate share of system
9 improvement costs.

10 (f) A municipal or county development impact fee ordinance shall be adopted in
11 accordance with the procedural requirements of Code Section 36-71-6.

12 (g) A municipal or county development impact fee ordinance shall include a provision
13 permitting individual assessments of development impact fees at the option of applicants
14 for development approval under guidelines established in the ordinance.

15 (h) A municipal or county development impact fee ordinance shall provide for a process
16 whereby a developer may receive a certification of the development impact fee schedule
17 or individual assessment for a particular project, which shall establish the development
18 impact fee for a period of 180 days from the date of certification.

19 (i) A municipal or county development impact fee ordinance shall include a provision for
20 credits in accordance with the requirements of Code Section 36-71-7.

21 (j) A municipal or county development impact fee ordinance shall include a provision
22 prohibiting the expenditure of development impact fees except in accordance with the
23 requirements of Code Section 36-71-8.

24 (k) A municipal or county development impact fee ordinance may provide for the
25 imposition of a development impact fee for system improvement costs previously incurred
26 by a municipality or county to the extent that new growth and development will be served
27 by the previously constructed system improvements.

28 (l) A municipal or county development impact fee ordinance may exempt all or part of
29 particular development projects from development impact fees if:

30 (1) Such projects are determined to create extraordinary economic development and
31 employment growth or affordable housing;

32 (2) The public policy which supports the exemption is contained in the municipality's
33 or county's comprehensive plan; and

34 (3) The exempt development's proportionate share of the system improvement is funded
35 through a revenue source other than development impact fees.

1 (m) A municipal or county development impact fee ordinance shall provide that
2 development impact fees shall only be spent for the category of system improvements for
3 which the fees were collected and in the service area in which the project for which the fees
4 were paid is located.

5 (n) A municipal or county development impact fee ordinance shall provide that, in the
6 event a building permit is abandoned, credit shall be given for the present value of the
7 development impact fee against future development impact fees for the same parcel of
8 land.

9 (o) A municipal or county development impact fee ordinance shall provide for a refund of
10 development impact fees in accordance with the requirements of Code Section 36-71-9.

11 (p) A municipal or county development impact fee ordinance shall provide for appeals
12 from administrative determinations regarding development impact fees in accordance with
13 the requirements of Code Section 36-71-10.

14 (q) Development impact fees shall be based on actual system improvement costs or
15 reasonable estimates of such costs.

16 (r) Development impact fees shall be calculated on a basis which is net of credits for the
17 present value of revenues that will be generated by new growth and development based on
18 historical funding patterns and that are anticipated to be available to pay for system
19 improvements, including taxes, assessments, user fees, and intergovernmental transfers.

20 36-71-5.

21 (a) Prior to the adoption of a development impact fee ordinance, a municipality or county
22 adopting an impact fee program shall establish a Development Impact Fee Advisory
23 Committee.

24 (b) Such committee shall be composed of not less than five nor more than ten members
25 appointed by the governing authority of the municipality or county and at least ~~40~~ 50
26 percent of the membership shall be representatives from the development, building, or real
27 estate ~~industries~~ industry. An existing planning commission or other existing committee
28 that meets these requirements may serve as the Development Impact Fee Advisory
29 Committee.

30 (c) The Development Impact Fee Advisory Committee shall serve in an advisory capacity
31 to assist and advise the governing body of the municipality or county with regard to the
32 adoption of a development impact fee ordinance. In that the committee is advisory, no
33 action of the committee shall be considered a necessary prerequisite for municipal or
34 county action in regard to adoption of an ordinance.

1 36-71-6.

2 Prior to the adoption of an ordinance imposing a development impact fee pursuant to this
3 chapter, the governing body of a municipality or county shall cause two duly noticed public
4 hearings to be held in regard to the proposed ordinance. The second hearing shall be held
5 at least two weeks after the first hearing.

6 36-71-7.

7 (a) In the calculation of development impact fees for a particular project, credit shall be
8 given for the present value of any construction of improvements or contribution or
9 dedication of land or money required or accepted by a municipality or county from a
10 developer or his or her predecessor in title or interest for system improvements of the
11 category for which the development impact fee is being collected. Credits shall not be
12 given for project improvements.

13 (b) In the event that a developer enters into an agreement with a county or municipality to
14 construct, fund, or contribute system improvements such that the amount of the credit
15 created by such construction, funding, or contribution is in excess of the development
16 impact fees which would otherwise have been paid for the development project, the
17 developer shall be reimbursed for such excess construction, funding, or contribution from
18 development impact fees paid by other development located in the service area which is
19 benefited by such improvements.

20 36-71-8.

21 (a) An ordinance imposing development impact fees shall provide that all development
22 impact fee funds shall be maintained in one or more interest-bearing accounts. Accounting
23 records shall be maintained for each category of system improvements and the service area
24 in which the fees are collected. Interest earned on development impact fees shall be
25 considered funds of the account on which it is earned and shall be subject to all restrictions
26 placed on the use of development impact fees under the provisions of this chapter. The
27 accounting records shall include the following information:

28 (1) The accounting records to be maintained shall specify the address of each property
29 which paid development impact fees, the amount of fees paid in each category in which
30 fees were collected, and the date that such fees were paid; and

31 (2) As to any exemptions granted, the accounting records to be maintained shall specify
32 the address of each property for which exemptions were granted, the reason for which
33 such exemption was granted, and the revenue source from which the exempt
34 development's proportionate share of the system improvements is to be paid.

(b) Expenditures of development impact fees shall be made only for the category of system improvements and in the service area for which the development impact fee was imposed as shown by the capital ~~improvement~~ improvements element and as authorized by this chapter. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

(c)(1) Transportation impact fees shall be expended to fund, in whole or in part, system improvement projects:

(A) That have been identified in the capital improvements element of the municipality's or county's comprehensive development plan; and

(B) That are prioritized by proximity to areas which have generated transportation impact fees and which provide the largest improvement in level of service for public transportation.

(2) Where no proposed system improvement project meets the criteria set forth in paragraph (1) of this subsection, transportation impact fees may be expended to fund, in whole or in part, system improvement projects that are included in the capital improvements element of the municipality's or county's comprehensive development plan, provided that the county or municipality separately states in its annual report that transportation impact fees have been expended, or encumbered, under this subsection. Each municipality or county which funds a system improvement project under this subsection shall be required to document that no projects met the criteria set forth in paragraph (1) of this subsection and shall include documentation stating the planning or engineering principles that demonstrate that such project provided service to developments which paid transportation impact fees.

(3) Where the expenditure of development impact fees paid by a development is allocated to system improvements in the general area of such development, through an agreement between the municipality or county and the fee payor and such agreement is approved by the governing body, the analysis required by paragraphs (1) and (2) of this subsection shall not be applicable.

(d) As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any development impact fees collected, encumbered, and used during the preceding year by category of public facility and service area.

36-71-9.

Any municipality or county which adopts a development impact fee ordinance shall provide for refunds in accordance with the following provisions:

(1) Upon the request of an owner of property on which a development impact fee has been paid, a municipality or county shall refund the development impact fee if capacity is available and service is denied or if the municipality or county, after collecting the fee when service is not available, has failed to encumber the development impact fee or commence construction within six years after the date that the fee was collected. In determining whether development impact fees have been encumbered, development impact fees shall be considered encumbered on a first-in, first-out (FIFO) basis;

(2) When the right to a refund exists due to a failure to encumber development impact fees, the municipality or county shall provide written notice of entitlement to a refund to the feepayor who paid the development impact fee at the address shown on the application for development approval or to a successor in interest who has given notice to the municipality or county of a transfer or assignment of the right or entitlement to a refund and who has provided a mailing address. Such notice shall also be published within 30 days after the expiration of the six-year period after the date that the development impact fees were collected and shall contain the heading 'Notice of Entitlement to Development Impact Fee Refund';

(3) An application for a refund shall be made within one year of the time such refund becomes payable under paragraph (1) or (2) of this Code section or within one year of publication of the notice of entitlement to a refund under this Code section, whichever is later;

(4) A refund shall include a refund of a pro rata share of interest actually earned on the unused or excess development impact fee collected;

(5) All refunds shall be made to the feepayor within 60 days after it is determined by a municipality or county that a sufficient proof of claim for a refund has been made; and

(6) The feepayor shall have standing to sue for a refund under the provisions of this chapter if there has been a timely application for a refund and the refund has been denied or has not been made within one year of submission of the application for refund to the collecting municipality or county.

36-71-10.

(a) A municipality or county which adopts a development impact fee ordinance shall provide for administrative appeals to the governing body or such other body as designated in the ordinance of a determination of the development impact fees for a particular project.

(b) A developer may pay a development impact fee under protest in order to obtain a development approval or building permit, as the case may be. A developer making such payment shall not be estopped from exercising the right of appeal provided by this chapter,

1 nor shall such developer be estopped from receiving a refund of any amount deemed to
2 have been illegally collected.

3 (c) A municipality or county development impact fee ordinance may provide for the
4 resolution of disputes over the development impact fee by binding arbitration through the
5 American Arbitration Association or otherwise.

6 36-71-11.

7 Municipalities and counties which are jointly affected by development are authorized to
8 enter into intergovernmental agreements with each other, with authorities, or with the state
9 for the purpose of developing joint plans for capital improvements or for the purpose of
10 agreeing to collect and expend development impact fees for system improvements, or both,
11 provided that such agreement complies with any applicable state laws.

12 36-71-12.

13 This chapter shall not repeal any existing laws authorizing a municipality or county to
14 impose fees or require contributions or property dedications for capital improvements;
15 provided, however, that all local ordinances or resolutions imposing development exactions
16 for system improvements on April 4, 1990, shall be brought into conformance with this
17 chapter no later than November 30, 1992.

18 36-71-13.

19 (a) Nothing in this chapter shall prevent a municipality or county from requiring a
20 developer to construct reasonable project improvements in conjunction with a development
21 project.

22 (b) Nothing in this chapter shall be construed to prevent or prohibit private agreements
23 between property owners or developers and municipalities, counties, or other governmental
24 entities in regard to the construction or installation of system improvements and providing
25 for credits or reimbursements for system improvement costs incurred by a developer,
26 including interproject transfers of credits or providing for reimbursement for project
27 improvement costs which are used or shared by more than one development project.

28 (c) Nothing in this chapter shall limit a municipality, county, or other governmental entity
29 which provides water or sewer service from collecting a proportionate share of the capital
30 cost of water or sewer facilities by way of hook-up or connection fees as a condition of
31 water or sewer service to new or existing users, provided that the development impact fee
32 ordinance of a municipality or county or other governmental entity that collects
33 development impact fees pursuant to this chapter shall include a provision for credit for

1 such hook-up or connection fees collected by the municipality or county to the extent that
2 such hook-up or connection fee is collected to pay for system improvements. Imposition
3 of such hook-up or connection fees by any governmental entity to pay for system
4 improvements either existing or new shall be consistent with the capital ~~improvement~~
5 improvements element of the comprehensive plan and shall be subject to the approval of
6 each county, municipality, or combination thereof which appoints the governing body of
7 such entity. The adoption, imposition, collection, and expenditure of such fees for system
8 improvements by any governmental entity shall be subject to the same procedures
9 applicable to the adoption, imposition, collection, and expenditure of development impact
10 fees by a county.

11 (d) Nothing in this chapter shall apply to a water authority created by Act of the General
12 Assembly, as long as such authority is not established as a political subdivision of the State
13 of Georgia but instead acts subject to the approval of a county governing authority."

14 **SECTION 2.**

15 This Act shall become effective on July 1, 2006.

16 **SECTION 3.**

17 All laws and parts of laws in conflict with this Act are repealed.